

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 380 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

INDUBHAI CHHANALAL @ SHANABHAI

Versus

NATVERLAL CHANNALAL

Appearance:

MR RA PATEL for Appellant

MR HM PARIKH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 27/08/97

ORAL JUDGEMENT

This appeal is directed against the order dated September 9, 1986 passed by the learned Civil Judge (S.D.) Nadiad, below application ex. 16 in Misc. Civil Application No. 16 of 1986.

2. The trial court had delivered the judgment and order dated September 3, 1986 granting probate in favour of the respondents in relation to the will of deceased

father of the parties and husband of respondent No. 2.

3. Since the above order was passed in absence of the appellant, the appellant filed application ex. 16 for setting aside the order for restoring Misc. Civil Application No. 16 of 1986 on the file of the District Court.

4. The trial court dismissed the above application of the appellant only on the ground that the application was not filed under Order 9 Rule 13 of the CPC. The ground given by the learned trial Judge is hyper technical, to say the least. If the application did not mention the provision of law or it was found to be defective on any technical ground, the trial court ought to have brought the same to the notice of the learned advocate at the time of hearing and given him an opportunity to amend the application. Unfortunately, the trial court did not adopt such pragmatic and reasonable approach and dismissed the application. Hence, the order under appeal deserves to be set aside and the trial court is required to be directed to hear and decide application ex. 16 filed by the appellant after giving the appellant an opportunity of amending the plaint.

5. Mr. R.A. Patel, learned counsel for the appellant states that his client will file necessary application for amending application ex. 16 within one month from today. Both the learned counsel state that their counterparts in the trial court will cooperate the trial court for expeditious disposal of the said application. In the meantime, the interim relief granted by this Court in Civil Application No. 2678 of 1986 shall continue till the disposal of the said application ex.16 on condition that the appellant files amendment application as stated above within one month from today. In case the amendment application is not moved within the aforesaid period, the interim relief shall cease to operate.

6. The appeal is accordingly disposed of with no order as to costs.

Amp/-